

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

DAVID H.,

Claimant,

v.

EASTERN LOS ANGELES REGIONAL  
CENTER,

Service Agency.

OAH No. 2011071023

A Proceeding Under the  
Lanterman Developmental Disabilities  
Services Act

**DECISION**

This matter was heard in a consolidated hearing by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Alhambra on September 1, 2011. Eastern Los Angeles Regional Center (Service Agency) was represented by Carmen Castro Luna, Supervisor of Family Services and Supports. Claimant David H. was represented by his father who was provided with the services of a Vietnamese interpreter.

The Service Agency presented Exhibits 1–14 and the argument of the Family Services and Supports Supervisor. Claimant presented the testimony and argument of the father. The Service Agency’s exhibits were admitted into evidence.

Oral and documentary evidence having been received and argument heard, the Administrative Law Judge submitted this matter for decision on September 1, 2011, and finds as follows:

## ISSUE

The issue presented for decision is whether claimant should receive more than 252 hours of in-home respite in lieu of out-of-home respite for the month of August 2011.

## FACTUAL FINDINGS

1. Claimant David H. was born on September 6, 2003, and is eight years old. He has been diagnosed with Pervasive Developmental Disorder and Attention Deficit Hyperactivity Disorder. Based on his diagnoses and developmental delays, he is eligible for and receives regional center services from the Service Agency, including respite, social emotional developmental intervention training to improve his social and play skills, and behavioral management and intervention services. He attends a full inclusion educational program in the Alhambra Unified School District. Claimant David H. receives Supplemental Security Income that helps pay for his daily living expenses and basic needs.

2. Claimant David H. is in good physical health but presents with behavioral challenges. He does not know how to make friends or to play with peers. He does not get along well with his twin sister and will grab toys from her. He has temper tantrums that include screaming, stomping his feet, throwing objects, and hitting his siblings. He is impatient, easily frustrated, and resistive in stressful situations. He tends to run away from his parents while out and about in the community.

3. Claimant lives with their parents, twin sister, and two other siblings in the family home in Alhambra. His twin sister and one of his brothers are also consumers of the Service Agency. His parents are unemployed and spend much of their time and energy caring for claimant and their three other children and supervising all of the children's developmental needs, regional center services, and school activities.

4. For the past few years, claimant's mother has used three weeks every August to visit her elderly parents who live in Ho Chi Minh City in Vietnam. While his wife is overseas visiting her parents, claimant's father stays home with claimant and their three other children. The parents have decided that summertime or August is the best time for the mother to visit her parents in Vietnam because all of their children are on summer vacation and not attending school. The parents have found that, once school starts and during the regular school year, their children are very busy with school work and both of them have to be at home to help their children with their homework, supervise their various activities, and coordinate their schedules.

5. In past years, when claimant's mother has gone to Vietnam, the Service Agency has provided the family with in-home respite in lieu of out-of-home respite. Out-of-home respite (OHR) services, as defined by the Service Agency's Purchase of Service Guideline, are intermittent or regularly scheduled temporary care provided outside the consumer's home by a vendored service provider. OHR is intended to assist the family in securing temporary outside support in providing appropriate care and supervision of the consumer.

6. Under his latest IPP dated September 27, 2010, the Service Agency is required to provide claimant with 30 hours per month of respite services. His father is the parent vendor of the respite services and is responsible for hiring and training respite workers, keeping respite records, withholding income taxes for the respite workers, and following the Service Agency's vouchered respite regulations. The IPP does not contain any reference to the provision of OHR but in letter revision of the IPP dated August 7, 2010, the Service Agency agreed to provide 257 hours of OHR for August 2010 after receiving proof of travel documents. Claimant's father agreed to the receipt of 257 hours of OHR. The Service Agency has allowed claimant to use in-home respite in lieu of OHR.

7. On March 22, 2011, in OAH Case No. 2010090532, claimant's request and appeal to receive 336 hours of OHR for August 2010 was denied on the grounds that the father had signed an agreement with the Service Agency that claimant and his family would receive 257 hours of OHR. In addition, it was determined that claimant's father failed to establish a need or justification for the additional hours of OHR.

8. In a Notice of Proposed Action dated July 15, 2011, the Service Agency denied claimant's request for 21 days at 16 hours per day, or 336 hours, of OHR for the period of August 1–21, 2011, while claimant's mother would be out-of-the-country visiting her parents in Vietnam. Instead, the Service Agency agreed to fund or provide 21 days at 12 hours per day, or 252 hours, of OHR. As reasons for its action, the Service Agency cited claimant's receipt of respite each month, the parents' responsibility to provide care and supervision to a minor under 13 years of age, and the requirement that the Service Agency consider whether the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities.

9. On July 21, 2011, claimant's father filed a Fair Hearing Request, asking that the Service Agency provide 336 hours of OHR for three weeks in August 2011 while his wife visited Vietnam. In his Fair Hearing Request and in the hearing in this matter, claimant's father contended that, two years ago, the family received 336 hours of OHR in the summer when his wife left the country to visit her parents. He asserted that the reduction of the OHR hours in 2010 was a mistake. He testified that 252 hours of OHR are not sufficient because he has four children, three of whom are developmentally disabled, the children argue with each other frequently, and he

needs help in the home while his wife is away. This summer, his wife went to Vietnam for three or four weeks in August 2011 and returned on August 26, 2011.

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Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

## LEGAL CONCLUSIONS

Grounds exist under the Lanterman Developmental Disabilities Services Act to grant claimant's request for more hours of OHR.

Under the Lanterman Act, the Legislature has decreed that persons with developmental disabilities have a right to treatment and rehabilitative services and supports in the least restrictive environment and provided in the natural community settings as well as the right to choose their own program planning and implementation. (Welf. & Inst. Code, § 4502.)<sup>1</sup>

Services and supports for persons with developmental disabilities means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability or toward the achievement and maintenance of independent, productive, normal lives. (§ 4512, subd. (b).) Services and supports may include physical and occupational therapy, recreation, behavior training, community integration services, daily living skills training, and social skills training. (*Ibid.*)

The Legislature has further declared regional centers are to provide or secure family supports that, in part, respect and support the decision making authority of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time, and build on family strengths and natural supports. (§ 4685, subd. (b).) Services by regional centers must be provided in the most cost-effective and beneficial manner. (§§ 4685, subd. (c)(3), and 4848, subd. (a)(11)) and must be individually tailored to the consumer (§ 4648, subd. (a)(2)).

Further, section 4648, subdivision (a)(8), provides that regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving funds to provide those services. Section 4659, subdivision (a)(1), directs regional centers to identify and

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<sup>1</sup> Further section references are to the Welfare and Institutions Code unless indicated otherwise.

pursue all possible sources of funding for consumers receiving regional center services.

Effective on September 1, 2008, section 4646.4, subdivision (a), requires regional centers, when purchasing services and supports, to ensure conformance with purchase of service policies and to utilize generic services and supports when appropriate. Regional centers are required to take into account the consumer's need for extraordinary care, services, and supports and supervision. Services and supports for persons with developmental disabilities includes respite which may be included in a consumer's IPP. (§ 4512, subd. (b).)

In-home respite services are intermittent or regularly scheduled temporary non-medical care and supervision provided for a regional center client in his or her own home and who resides with a family member. (§ 4690.2, subd. (a).) Respite care is designed to assist family members in maintaining the client at home, provide appropriate care and supervision to ensure the client's safety in the absence of family members, relieve family members from the constantly demanding responsibility of caring for the client, and attend to the client's basic self-help needs and other activities of daily living, including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by family members. (§ 4690.2, subd. (a)(1-4).)

Effective July 1, 2009, a regional center may only purchase respite services when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities. (§ 4686.5, subd. (a)(1).) A regional center shall not purchase more than 21 days of out-of-home respite services in a fiscal year for a consumer. (§ 4686.5, subd. (a)(2).) A regional center may grant an exemption to this limit of 21 days if it is demonstrated that the intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer (§ 4686.5, subd. (a)(3).)

Under the Service Agency's Purchase of Service (POS) Guideline for Out-of-Home Respite Services, dated May 2, 2011, a consumer who resides with a family member is eligible for OHR when the occasional needs of the consumer and/or family are more than the support of friends and natural and community supports can provide and may be used as a support option should family members have planned activities such as a vacation. OHR may be provided to a consumer and the family when the care and supervision needs of the consumer exceed that of an individual of the same age without developmental disabilities. In-home respite in lieu of OHR may be used only when there is no out-of-home respite arrangement available.

The POS Guideline further provides that the Service Agency may not purchase more than 21 days of OHR in a fiscal year. The Service Agency may grant an exemption to this limit if it is demonstrated that the intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer. Within the limit of 21 days, the daily amount of OHR is calculated on individual needs and cannot exceed 16 hours per day. Hours are calculated by taking into account the amount of time that the consumer attends school or day programs during the day, after school care, social and recreational programs, and hours of sleep, for respite hours cannot be provided during these times. The effectiveness of OHR is to be determined by feedback from the family or the consumer and an assessment of the progress towards meeting objectives of the consumer's IPP. OHR is a service that must be included in a consumer's IPP.

Because claimant has been receiving in-home respite in lieu OHR from the Service Agency and the Service Agency has proposed to provide him with OHR again this year, claimant is deemed eligible for OHR under the Lanterman Act and the Service Agency's Purchase of Service Guideline. Two or three years ago, claimant received 336 hours of OHR when his mother was out of the country for approximately three weeks in the summer. Last year, the Service Agency provided claimant with 257 hours of OHR pursuant to an agreement with claimant's father, which agreement was affirmed in a Decision in Case No. 2010090532. This year, on July 15, 2011, the Service Agency denied the request for funding 336 hours and agreed to provide 252 hours of OHR. Since it has determined to reduce or change the number of OHR hours from 257 to 252 hours without the mutual consent of claimant, the Service Agency bears the burden of showing that its action was appropriate under the circumstances. Claimant bears the burden of showing that he is entitled to receive the maximum allowable amount of 336 hours, or 21 days at 16 hours per day, of OHR.

Here, the Service Agency has not met its burden of proof. The Service Agency did not show as required by its Purchase of Service Guideline for OHR Services that it calculated what should be the appropriate number of daily hours of OHR based on the individual need of the consumer or by taking into account the amount of time that claimant attends school or a day program, after-school care, social and recreational program, and hours of sleep. The Service Agency, in fact, presented no evidence of such calculation. The Service Agency argued that perhaps the mother should visit her parents in Vietnam during another part of the year when the children were in school. However, claimant's father explained that summertime, and specifically August, was a better time because the children were less busy with their school work and activities. The fact that claimant and his siblings are not in school in August due to summer break has a tendency in reason to support the conclusion that claimant's father would need more, and not less, OHR hours to provide care and supervision for claimant and his three siblings while the mother was

out of the country. On the other hand, claimant's father has likewise failed to demonstrate that claimant and his family needs the full allotment of 336 hours of OHR due to the activities and time demands of claimant and his other children. Because he is unemployed, claimant's father is expected to care for and supervise his children along with the respite worker or workers that he would hire with the OHR hours. The Service Agency may not reduce claimant's OHR hours.

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Wherefore, the Administrative Law Judge makes the following Order:

### ORDER

The appeal of claimant David H. of the determination of the Eastern Los Angeles Regional Center is granted, in part, and the proposed action of the Eastern Los Angeles Regional Center to reduce claimant's in-home respite in lieu of out-of-home respite to 252 hours is over-ruled. Eastern Los Angeles Regional Center shall provide claimant with 257 hours of OHR for the month of August 2011 provided that claimant submits documentary proof that his mother traveled out of the country for three weeks.

Dated: September 9, 2011

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Vincent Nafarrete  
Administrative Law Judge  
Office of Administrative Hearings

### NOTICE

**This is the final administrative decision and both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**